



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

December 21, 1989

Honorable Billy Ray Stubblefield  
Williamson County Attorney  
P. O. Box 1139  
Georgetown, Texas 78627-1139

LO-89-107

Dear Mr. Stubblefield:

You ask whether the office of judge of the Williamson County Court at Law No. 2 should appear on the ballot in the 1990 primary and general elections or whether the commissioners court will fill the office by appointment. In adopting Senate Bill 221, the legislature provided:

Notwithstanding Section 25.2481, Government Code, the County Court at Law No. 2 of Williamson County is created January 1, 1991, or on an earlier date determined by the commissioners court by an order entered on its minutes.

Acts 1989, 71st Leg., ch. 2, § 8.25(c). The authorization for the second county court at law for Williamson County occurred with the enactment of Senate Bill 1335 during the 70th legislature. The bill took effect on August 31, 1987. Thus, the commissioners court has had statutory authorization since August 31, 1987, to enter an order establishing the court and to appoint a judge to the office. You tell us that since that time the commissioners court has taken no action in this matter.

Your question arises because several persons have indicated an interest in becoming candidates for the office of judge of this court, and you inquire whether a vacancy exists in the office before January 1, 1991. Section 201.02 of the Election Code addresses the time that a vacancy occurs when a new office is created. It provides:

Sec. 201.027. New Office. If a new office is created, a vacancy occurs on the effective

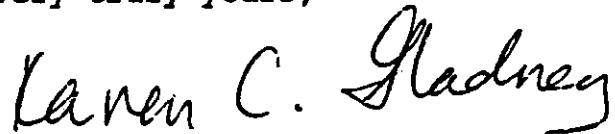
date of the statute creating the office or on the date the order creating the office is adopted.

The Election Code applies to all elections and supersedes a conflicting statute unless the code or the outside statute expressly provides otherwise. Elec. Code sec. 1.002. According to section 201.027, a vacancy in the newly created office has existed since August 31, 1987, the effective date of the statute. This conclusion is consistent with Attorney General Opinion C-198 (1963).

It is our opinion, therefore, that a vacancy exists in the office, and that interested individuals may file applications for the upcoming primary elections. You rely on Attorney General Opinion H-134 (1973) to reach an opposite conclusion. That opinion did not consider the Election Code provision quoted above; it is not dispositive of the situation you present.

We acknowledge the anomaly of applying this Election Code provision when two primary and general elections occur between the effective date of the statute and the specific date set forth in the act. That is not the question before us, however. We are confident that a court in this instance would hold that public policy is served by the election of a judge to serve a term beginning January 1, 1991.

Very truly yours,



Karen C. Gladney  
Assistant Attorney General  
Opinion Committee

APPROVED: Rick Gilpin, Chairman  
Opinion Committee

Sarah Woelk, Chief  
Letter Opinion Section

Ref.: ID# 8436

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